IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 4995 of 1999

Between:

Sajeed Ali S/o.Osman Ali
R/o.Kalavakurthy Mahaboobnagar Dist.

... PETITIONER

AND

1 The Commissioner of Prohibition & Excise
Andhra Pradesh Hyderabad.
2 The Deputy Commissioner of Prohibition & Excise
Mahabubnagar Division Mahaboobnagar Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate order or direction more particularly one in the nature of the Writ of Mandamus declaring the proceedings issued by the First Respondent herein CR.NO.2046/DPE/98/B2 dated 4-12-1998 confirming the order of the Second Respondent herein CR.NOB1/1122/98 dated 10-7-1998 as illegal and arbitrary and to pass such other or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioner: MR.A.RAVI SHANKAR, Advocate.

For the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

W.P.NO.4995 OF 1999

ORDER:

The petitioner herein is the owner of Jeep bearing registration No.APM-1100

which was seized by Sub Inspector of Police, Vangoor Police Station and Circle inspector of Police, Kalwakurthy, on 06.04.1998 for illegal transportation of IML bottles without any transport permit and the driver of the vehicle was arrested and deposited the IML bottles before Deputy Commissioner (Prohibition and Excise).

On production of the said vehicle and IML bottles, show cause notice was issued to the petitioner for confiscation of the vehicle on the following grounds:

1. The Jeep bearing No.APM-1100 was seized for illegal transportation of (24) bottles of IML each one 180 ML. Thus the owner has violated the Section 34(a) & 45(2) of the Andhra Pradesh Excise Act, 1968.

2. As per Sections 45 and 46 of the Andhra Pradesh Excise Act, 1968, the vehicle used for illegal transportation of IML is liable for confiscation.

The petitioner submitted his explanation by filing an application before the Deputy Commissioner (Prohibition & Excise) who enquired into the case and submitted a report stating that through the said jeep IML bottles were transported and the said IML stock was duty paid, but the transportation of the stock was without transport permit. In view of the same, he ordered for confiscation of the vehicle of the petitioner in favour of the Government. Aggrieved by the same the petitioner filed an appeal before the first respondent.

After considering the evidence on record and orders passed by the Deputy Commissioner to confiscate the vehicle, the first respondent dismissed the appeal. Correctness of the above orders is subject matter of challenge in the present writ petition, contending that both the authorities without considering the explanation offered by the petitioner ordered for confiscation, which is in violation of principles of natural justice.

The liquor bottles which were being transported were duty paid bottles and were transported to a licensee of the shop and there is no contravention of the provisions of the Andhra Pradesh Excise Act. As per the report of the Assistant Excise Superintendent, Mahabubnagar, who enquired into the matter, the liquor bottles transported were duty paid, but the transportation of the stock

was without transport permit and the transport permission which was given on 02.04.1998 to the licensee of a wine shop was authorised to be carried on in a vehicle bearing No.A.P.22A-6856, but the same was transported in the personal vehicle without having any transport permit. In view of the same, the extreme penalty of confiscation of vehicle is disproportionate to the commission of offence.

Since the petitioner's vehicle was ordered to be released during the pendency of the appeal on furnishing bank guarantee of Rs.25,000/- to the satisfaction of second respondent for the full value of the motor vehicle, The ends of justice will be met if the said confiscation is confined to a sum of Rs.10,000/- by way of penalty.

On adjusting the bank guarantee furnished to the said extent of the vehicle the respondent herein is directed to release the remaining bank guarantee in favour of the petitioner.

The writ petition is accordingly disposed of. No costs.

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(A. GOPAL REDDY, J)

June 25, 2004

Dsk/Murthy

1 The Commissioner of Prohibition & Excise
Andhra Pradesh Hyderabad.
2 The Deputy Commissioner of Prohibition & Excise
Mahabubnagar Division Mahaboobnagar Dist.

3 Two C.C.s to the G.P for Prohibition and Excise.

4 Two C.D. Copies.